



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0233; FRL-9979-35-Region 9]

Air Plan Approval; California; San Diego County Air Pollution Control District;

Stationary Source Permits and Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve and conditionally approve revisions to the San Diego County Air Pollution Control District's (SDAPCD or "District") portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA). This action updates the SDAPCD's applicable SIP with current SDAPCD permitting rules. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2018-0233 at <http://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically

any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ya-Ting Tsai, EPA Region IX, (415) 972-3328, *Tsai.Ya-Ting@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State's Submittal

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates when they were adopted by the SDAPCD and submitted by the California Air Resources Board (CARB), which is the governor's designee for California SIP submittals. Collectively, these submittals generally constitute the SDAPCD's current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent a comprehensive revision to the SDAPCD's preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act (nonattainment NSR or NNSR) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (minor NSR). The SDAPCD does not implement a SIP-approved prevention of significant deterioration (PSD) permitting program and has not submitted the rules in this action for purposes of the PSD program; therefore, we are not evaluating whether this SIP submittal satisfies PSD program requirements at 40 CFR 51.166.

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Adopted Date	Submitted Date
11	Exemptions from Rule 10 Permit Requirements	05/11/2016	08/22/2016
20	Standards for Granting Permits	06/10/1986	11/21/1986
20.1	New Source Review – General Provisions	04/27/2016	06/17/2016
20.2*	New Source Review – Non-Major Stationary Sources	04/27/2016	06/17/2016
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	04/27/2016	06/17/2016
20.4*	New Source Review – Portable Emission Units	04/27/2016	06/17/2016
20.6	Standards for Permit to Operate Air Quality Analysis	04/27/2016	06/17/2016
24	Temporary Permit to Operate	06/29/2016	08/22/2016

* The following subsections of the Rules 20.2-20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.2 Subsections (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); Rule 20.3 Subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 Subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

On October 14, 2016, the EPA determined that the submittal of Rules 20.1, 20.2, 20.3, 20.4 and 20.6 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On September 27, 2016, we determined that the submitted versions of Rules 11 and 24 met these completeness criteria. On May 21, 1987, the submittal of Rule 20 was deemed complete by operation of law.

In addition to these SIP submittals, on April 27, 2018 the District and CARB transmitted a commitment letter to the EPA to adopt and submit specific enforceable measures by July 31, 2019 to address deficiencies in the submitted rules identified by the EPA.¹

B. Are there other versions of these rules?

The EPA last approved significant revisions or updates to the SDAPCD's SIP-approved NSR program in the 1980s. The existing SIP-approved NSR program for new or modified stationary sources under the SDAPCD's jurisdiction generally consists of the versions of the rules identified below in Table 2.

TABLE 2 – SIP APPROVED RULES

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
11	Exemptions from Rule 10 Permit Requirements	07/06/1982	47 FR 29233 ²
20	Standards for Granting Applications	09/22/1972	37 FR 19812
20.1	New Source Review – General Provisions	04/14/1981	46 FR 21757
20.2	New Source Review – Non-Major Stationary Sources	04/14/1981	46 FR 21757
20.3	New Source Review – Major Stationary Sources and PSD Stationary Sources	04/14/1981	46 FR 21757
20.4	New Source Review – Portable Emission Units	04/14/1981	46 FR 21757
20.6	Standards for Permit to Operate Air Quality Analysis	04/14/1981	46 FR 21757
24	Temporary Permit to Operate	10/24/2008	73 FR 63382

¹ Letter dated April 16, 2018, from Jim Swaney, P.E., to Carol Sutkus and Doris Lo, Subject: “Commitment Letter to Fix Deficiencies in New Source Review Rules State Implementation Plan Submittal”; letter dated April 27, 2018, from Dr. Michael Benjamin to Alexis Strauss.

² The EPA approved Rule 11 in its entirety for incorporation into the California SIP in September 22, 1972 (37 FR 19812) and approved revisions in 1982.

Collectively, these regulations establish the NSR requirements that are currently in place for both major and minor stationary sources under the SDAPCD's jurisdiction in California. If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1.

C. What is the purpose of the submitted rule revisions?

As noted above and described in further detail below, the submitted rules are intended to satisfy the minor NSR and NNSR requirements of section 110(a)(2)(C) and part D of title I of the Act, and related EPA regulations. Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only for areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). San Diego County is currently classified as a "moderate" nonattainment area for the 2008 8-hour ozone NAAQS and is designated attainment or unclassifiable for all other NAAQS. *See* 40 CFR 81.305. Therefore, in addition to being subject to the requirements for minor NSR at section 110(a)(2)(C) of the Act, California is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone and ozone precursors within the San Diego County nonattainment area, under part D of title I of the Act.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA has evaluated the submitted rules for compliance with applicable requirements of section 110(a)(2)(C) and part D of title I of the CAA and associated regulations at 40 CFR 51.160-165, consistent with the District's current classification as a "moderate" nonattainment area for the 2008 8-hour ozone NAAQS. We have also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160-51.164 provide general programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the "minor NSR" or "general NSR" program, apply generally to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for PSD and NNSR permitting programs under parts C and D of title I of the Act that apply to major sources in attainment and nonattainment areas, respectively.

Part D of title I of the Act, and the implementing regulations at 40 CFR 51.165, contain the NNSR program requirements for major stationary sources and major modifications (as those terms are defined at 40 CFR 51.165) at facilities that are located in a nonattainment area and are major sources for the pollutants for which the area has been designated nonattainment.

The SDAPCD has elected not to submit rules to satisfy requirements of the PSD program under part C of title I of the Act for major stationary sources in attainment areas at this time. Accordingly, the EPA is not evaluating whether this SIP submittal satisfies PSD program requirements at 40 CFR 51.166, and some portions of Rules 20.2–20.4 addressing major sources in attainment areas are excluded from the submittal. See Table 1. The EPA remains the PSD permitting authority in San Diego County.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

B. Do the rules meet the evaluation criteria?

With the exceptions noted below, the EPA finds that the submitted rules generally satisfy the applicable CAA and regulatory requirements. Accordingly, we are proposing to fully approve Rules 11, 20, and 24 under CAA section 110(k)(3), and to conditionally approve Rules 20.1, 20.2, 20.3, 20.4, and 20.6 under CAA section 110(k)(4). Below, we discuss generally our evaluation of the submitted rules. The technical support document (TSD) included in the docket for this proposed rulemaking contains a more detailed analysis.

We find that the submitted rules satisfy the minor NSR requirements. The rules clearly identify the kinds of projects subject to review under the District's program, include legally enforceable procedures to ensure that construction will not violate the state's control strategy or interfere with attainment or maintenance of the NAAQS, provide for public availability of relevant information, and meet other requirements of the minor NSR regulations at 40 CFR 51.160–164. In general, Rules 11, 20, 20.1, 20.6 and 24 incorporate general regulatory requirements of the minor NSR program, while Rules 20.2, 20.3, and 20.4 apply applicable elements of the program to minor stationary sources, major stationary sources, and portable emission units, respectively.

We find that the submitted rules satisfy nearly all applicable statutory and regulatory NNSR requirements, including definitions, applicability procedures, and requirements for sources in nonattainment areas to obtain emission reduction offsets and comply with the lowest achievable emissions rate. These requirements are met substantially through Rule 20.1, and other elements are addressed in Rules 20.2–20.4. The EPA has identified two deficiencies in the rules. First, the submitted rules do not contain recordkeeping and reporting requirements for sources using an actual-to-potential-actual test to determine applicability of major source requirements. The submitted Rule 20.1 provides an option for sources to use the federal actual-to-potential-actual test under 40 CFR 51.165(a)(2)(ii)(B) through (F); however, the rule does not include associated provisions at 40 CFR 51.165(a)(6) and (7) that require these sources to comply with recordkeeping and reporting requirements. Second, the rules do not incorporate the requirement at section 173(a)(4) of the Act, which states that NNSR permit programs shall provide that permits to construct and operate may not be issued if the EPA Administrator has determined that

the applicable implementation plan for the nonattainment area is not being adequately implemented. As described below, these deficiencies are the basis for the EPA's proposed conditional approval of the District's June 17, 2016 submittal.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the SDAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l).

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would strengthen the applicable SIP. The current SIP-approved San Diego NNSR program is significantly out of date when compared with current federal NNSR regulatory requirements, and the updated versions of the submitted rules bring the program up to date with current requirements. As a whole, the submitted rules are more stringent and will be more protective of air quality in San Diego County, and we have determined that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

Similarly, we find that the submitted rules are approvable under section 193 of the Act. Most of the submitted rules were last approved prior to November 15, 1990, and are subject to the general requirement to ensure equivalent or greater emission reductions. We have determined that the submitted rules will ensure greater reductions overall relative to the SIP-approved version of the rules.

The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules generally satisfy the applicable CAA and regulatory requirements for minor NSR and NNSR permit programs under CAA section 110(a)(2)(C) and part D of title I of the Act and other applicable requirements, subject to the two exceptions noted above where the EPA has identified a deficiency. For those exceptions, the District and CARB have committed to adopt and submit revisions to address the identified deficiencies within a year of the date of approval, consistent with the requirements at CAA section 110(k)(4) for conditional approval.

C. Proposed action and public comment

Based on our evaluation of the submitted rules, the EPA is proposing to fully approve the SDAPCD's August 22, 2016 and November 21, 1986 submittals (consisting of Rules 11, 20, and 24), and to conditionally approve the District's June 17, 2016 submittal (consisting of Rules 20.1, 20.2, 20.3, 20.4, and 20.6). Under CAA section 110(k)(3), the EPA may approve a plan revision in whole or in part if it meets all applicable requirements. Under CAA section 110(k)(4), the EPA may conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.

As described above, the EPA has determined that the submitted rules generally comply with most applicable requirements, but do not satisfy the requirements at 40 CFR 51.165(a)(6) and (7) and section 173(a)(4) of the Act. On April 16, 2018, the District transmitted to CARB

and the EPA a commitment to revise the submitted rules by amending Rule 20.1 to incorporate the requirements at 40 CFR 51.165(a)(6) and (7) and by amending Rule 20.3 to incorporate the requirement at CAA section 173(a)(4), and to transmit the revised rules to CARB no later than June 30, 2019. The amendments to Rules 20.1 and 20.3 as described above will cure the deficiencies in Rules 20.2, 20.4, and 20.6. On April 27, 2018, CARB committed to submit these rules to the EPA no later than July 31, 2019. These letters commit the District to adopt specific enforceable measures to correct the rule deficiencies and commit the state to submit them to the EPA by a date certain, and the EPA has determined that if the District adopts and submits these revisions as committed, the identified deficiencies will be cured. Accordingly, we find that these commitment letters are consistent with CAA requirements regarding conditional approval at CAA section 110(k)(4).

The intended effect of our proposed conditional approval action is to update the applicable SIP with current SDAPCD rules and provide the SDAPCD the opportunity to correct the identified deficiencies. If we finalize this action as proposed, our action would be codified through revisions to 40 CFR 52.220 (Identification of plan—in part) and 40 CFR 52.248 (Identification of plan—conditional approval).

If the State meets its commitment to submit the required measures and the EPA approves the submission, then the deficiencies listed above will be cured. However, if the District fails to submit these revisions within the required timeframe, the conditional approval will become a disapproval, and the EPA will issue a finding of disapproval. The EPA is not required to propose the finding of disapproval. Further, a finding of disapproval would start an 18-month clock to apply sanctions under CAA section 179(b) and a two-year clock for a federal implementation

plan under CAA section 110(c)(1).

We will accept comments from the public on this proposal until **[insert date 30 days after the date of publication in the Federal Register]**.

III. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SDAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork

Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR

67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 4, 2018.

Michael Stoker,
Regional Administrator,
Region IX.

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